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No. 08-597

Supreme Court, U.S.
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In The

Supreme Court of the United States

GERARD P. DUMORANGE,

Petitioner,

v.

CITY OF MIAMI,

Respondent.

On Petition For Writ Of Certiorari To The Florida Third District Court Of Appeal

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the state trial court violated any federal rights of the Petitioner where, after a full evidentiary hearing on two dates where the Petitioner was represented by counsel, the court found that a settlement agreement was legally binding and entered an order enforcing the agreement, which was entered into between the parties at a court-ordered mediation where the Petitioner was present and represented by counsel.

PARTIES TO THE PROCEEDINGS

Petitioner is Gerard P. Dumorange, who was the plaintiff, appellant, and petitioner below.

Respondent is the City of Miami, which was the defendant, appellee, and respondent below.

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OPINIONS BELOW

The Petitioner seeks review of the order of the Florida Supreme Court declining jurisdiction reported at *Dumorange v. City of Miami,* 987 So.2d 80, 2008 WL 2521903 (Fla. 2008). The order of the court of appeal denying the Petitioner's motion for recusal is reported at *Dumorange v. City of Miami,* 972 So.2d 189 (Fla. Ct. App. 2008). The order of the circuit court granting Respondent's motion to enforce settlement agreement is not reported and is reproduced at Appendix 1.

STATEMENT OF THE CASE

The Petitioner is a former public employee who held the rank of police officer in the City of Miami Police Department. The Petitioner filed a lawsuit in Florida circuit court against the City of Miami alleging violation of the Florida Public Whistle-blower's Act, Fla. Stat. § 112.3187. *Dumorange v. City of Miami,* Case No. 03-22103 (11th Judicial Circuit Court in and for Miami-Dade County, Florida).

On April 18, 2006, the parties attended a court-ordered mediation. The Petitioner and the Respondent were represented by counsel at the mediation (which lasted more than four hours). At the conclusion of the mediation, the parties reached a settlement and signed an agreement. The petitioner did not sign under protest. The mediator filed a report

with the court confirming that a settlement had been reached.

Subsequently, on April 19, 2006, at the end of the day, Petitioner's counsel notified Respondent's counsel that the Petitioner was revoking his acceptance of the settlement. The Petitioner terminated his attorney and retained substitute counsel.

The Respondent filed a motion to enforce the settlement agreement. The circuit court held an evidentiary hearing on two dates: December 13, 2006 and January 8, 2007. The Petitioner was represented by counsel at the hearing. Witnesses at the hearing included: the attorney who represented the Petitioner at the mediation; a police commander who was alleged to have threatened the Petitioner; the Petitioner; and the Petitioner's spouse. After the hearings, the circuit court granted the Respondent's motion to enforce settlement agreement. The written order granting the motion was entered on January 23, 2007 and required the Petitioner to execute a general release within ten days. App. 1

Numerous appeals followed the circuit court's order enforcing the settlement agreement. On February 6, 2007, the Petitioner appealed the circuit court's order to the Florida Third District Court of Appeal in *Dumorange v. City of Miami*, Case No. 3D07-321. On May 2, 2007, the Court of Appeal per curiam affirmed the circuit court order. *Dumorange v. City of Miami*, 959 So.2d 1197 (Fla. Ct. App. 2007).

On August 13, 2007, the Petitioner appealed the decision of the court of appeal to the Florida Supreme Court in *Dumorange v. City of Miami*, Case No. SC07-1521. On August 15, 2007, the Florida Supreme Court dismissed the appeal for lack of jurisdiction. *Dumorange v. City of Miami*, 965 So.2d 121 (Fla. 2007).

On September 14, 2007, the Petitioner filed a second appeal of the same circuit court order by filing a petition for writ of certiorari with the court of appeal in *Dumorange v. City of Miami*, Case No. 3D07-2321. On October 9, 2007, the court of appeal denied the petition.

On December 10, 2007, the Petitioner appealed the denial of his petition for writ of certiorari to the Florida Supreme Court in *Dumorange v. City of Miami*, Case No. SC07-2309. On December 13, 2007, the Florida Supreme Court dismissed the appeal for lack of jurisdiction. *Dumorange v. City of Miami*, 973 So.2d 1120 (Fla. 2007).

On January 8, 2008, in Case No. 3D07-2321, the court of appeal entered an order denying a motion by the Petitioner requesting recusal of the panel of judges. *Dumorange v. City of Miami*, 972 So.2d 189 (Fla. Ct. App. 2008). On January 25, 2008, the Petitioner filed another appeal to the Florida Supreme Court, following the order of the court of appeal denying the Petitioner's motion for recusal of judges, in *Dumorange v. City of Miami*, Case No. SC08-189. On June 20, 2008, the Florida Supreme Court declined to

accept jurisdiction. *Dumorange v. City of Miami,* 987 So.2d 80, 2008 WL 2521903 (Fla. 2008).

In the meantime, the Respondent filed a motion in the circuit court to dismiss the case as a result of the Petitioner's failure to comply with the court's order directing him to execute the release, which had now been affirmed (more than once). On April 16, 2008, the circuit court held a hearing on the motion to dismiss. After the hearing, on May 5, 2008, the circuit court granted respondent's motion and entered an order dismissing the case.

On May 29, 2008, the petitioner filed an appeal of the dismissal of the case with the court of appeal in *Dumorange v. City of Miami*, Case No. 3D08-1375. On June 3, 2008, the court of appeal entered an order requiring the petitioner to pay the required filing fee by June 23, 2008. As of July 21, 2008, the petitioner had not paid the required filing fee. Therefore, on July 21, 2008, the court of appeal dismissed the appeal. *Dumorange v. City of Miami,* 986 So.2d 612, 2008 WL 3561902 (Fla. Ct. App. 2008).

Subsequently, Dumorange filed the instant Petition.

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE STATE COURT ENFORCING THE PARTIES' SETTLEMENT AGREEMENT IS LEGALLY SOUND AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION FOR REVIEW BY THE UNITED STATES SUPREME COURT PURSUANT TO 28 U.S.C. § 1257.

The Petitioner seeks a Writ of Certiorari to an Order of the Florida Supreme Court dated June 20, 2008, declining to accept jurisdiction over an order of the court of appeal. However, Petitioner did not timely seek review in this Court over the earlier appellate decisions upholding the order of the circuit court enforcing the parties' settlement agreement. Thus, the Petition should be denied as untimely.

On its merits, however, the Petition should also be denied as the decision of the Florida courts enforcing the settlement is legally sound and does not implicate a federal question for review by this Court under 28 U.S.C. § 1257.

The issue asserted by Petitioner arises out of a garden variety dispute between the Petitioner and the Respondent over the enforcement of a contract. The dispute was decided against the Petitioner by a state court trial judge. The Petitioner was afforded an

evidentiary hearing which took place over two dates. At the conclusion, the trial judge, taking into consideration the weight of the testimony and the credibility of the witnesses, resolved the dispute in favor of the Respondent and entered an order accordingly. After numerous appeals through the Florida appellate courts, the relief sought in this Court is essentially another cumulative re-evaluation of the evidence in an attempt to resurrect a properly resolved state law claim.

The trial court's decision rejecting the Petitioner's claim of duress and enforcing the settlement agreement was supported by the evidence at the hearings on December 13, 2006 and January 8, 2007.

At the hearings, Petitioner testified that he was under duress stating *inter alia* that he was threatened by a commander at the police department. The commander of the police department testified at the hearing unequivocally stating that he did not threaten the Petitioner. The attorney who represented the Petitioner at the mediation testified. She stated that the Petitioner read the agreement before signing it at the mediation. She did not advise the Petitioner that he was required to sign the agreement. At the mediation, the parties engaged in substantial negotiation with regard to issues that were important to the Petitioner. The mediation lasted more than four hours. She believed the Petitioner's mental state at the mediation was such that he could reach a rational decision. She stated her belief that his impetus for settling the case was that he was

advised by a prospective employer that he needed to resolve the lawsuit in order to be hired, and that he was generally anxious to resolve the case. The Petitioner's spouse testified at the hearing. She stated that the Petitioner wanted his name cleared so that he could obtain another job.

Based on the evidence presented at the hearing, the order of the circuit court is legally sound and should not be disturbed. As a fact-finder, the trial judge is accorded deference on the resolution of disputed factual issues by judging the credibility of witnesses. *Cf. Hernandez v. New York,* 500 U.S. 352, 365 (1991) (deference to trial court findings makes particular sense where findings turn on credibility). The outcome in this case that the settlement was legally binding is amply supported by the evidence; there is no compelling reason to override the determination of the trial judge under the circumstances of this case.

Moreover, this Petition does not implicate any actual "title, right, privilege, or immunity . . . under the Constitution or the treaties or the Statutes of . . . the United States." 28 U.S.C. § 1257. The reference to Constitutional issues (Fourteenth Amendment violation) in this case is a subterfuge to invalidate an otherwise enforceable settlement agreement that has already been reviewed and approved by state courts. The proceedings below, where the Petitioner was represented by counsel and was afforded notice, an evidentiary hearing, the right to present testimony and cross-examine witnesses, satisfies more than the minimum requirements of due process. *LaChance v.*

Erickson, 522 U.S. 262, 266 (1998) (core of due process is notice and opportunity to be heard). There is no violation of due process or any other federal right by enforcement of the settlement (or the denial of recusal). As a result, this petition does not present a substantial federal question for review pursuant to 28 U.S.C. § 1257. Additional review by this Court is unnecessary and would be a further waste of judicial resources. Accordingly, review by this Court is unwarranted and should be denied.

CONCLUSION

For the reasons stated herein, the respondent respectfully requests that this Court deny Dumorange's Petition for Writ of Certiorari and affirm the Florida Supreme Court in all respects.

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

GERARD DUMORANGE,

Plaintiff,

CASE NO. 03-22103 CA 24

vs.

CITY OF MIAMI,

Defendant.

_____/

ORDER

THIS CAUSE having come for hearing on January 8, 2007, before this Court upon Defendant, CITY OF MIAMI's, Motion to Enforce Settlement Agreement, and the Court having heard argument and being otherwise advised in the premises, it is hereby:

ORDERED AND ADJUDGED

1. That the Defendant's Motion is hereby GRANTED. The Plaintiff shall execute a general release within 10 days from the date of this Order.

2. The City shall transmit payment of the settlement funds to Plaintiffs counsel within 10 days of receipt of the general release.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida this 23 day of January, 2007.

MICHAEL A. GENDEN
CIRCUIT JUDGE

HONORABLE
MICHAEL A. GENDEN
CIRCUIT COURT JUDGE

Copies furnished to:
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